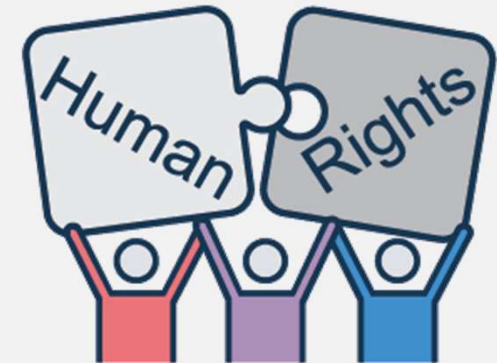


Human Rights: Inclusive Education

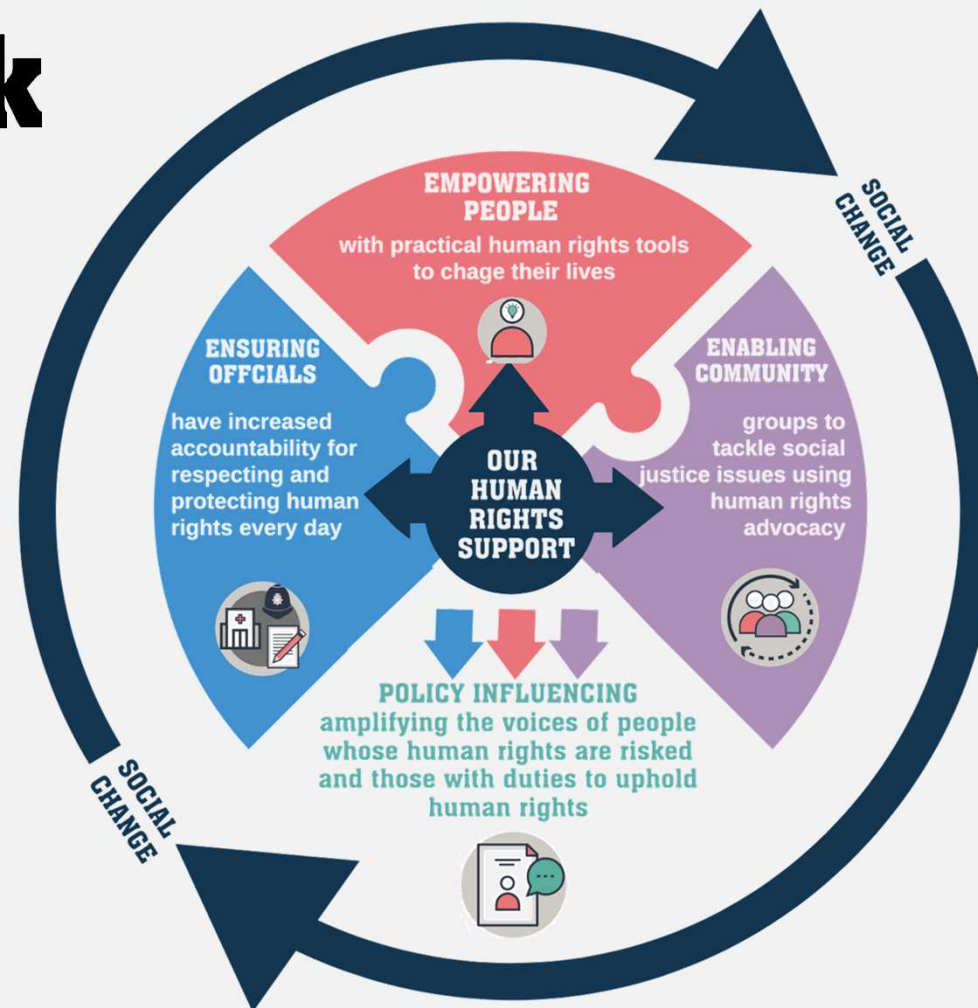
Sanchita Hosali
Director
British Institute of Human Rights



Our Work

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A quick not about interaction

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Joining as a
participant?

No account needed.

Enter event code



We will use a website called Slido to help interaction

It is easier to use Slido on a separate phone or tablet OR you can also open another internet window on your device

Type in slido.com

In this section type in the code: InclusiveEducation

If you prefer you can use the Zoom chat bar to join in.

Self care



- We will talk about how human rights apply to real life.
- This may make you feel upset or anxious; please take a moment and leave the session if you need to.
- We do not give legal advice or do casework.
- If you or someone you support is at risk of immediate serious harm you should contact the police on 999. For non-emergency situations you can contact them on 101.

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What do the words "human rights" make you think? Could be a thought or feeling, a specific right, experiences, positive, negative, etc.

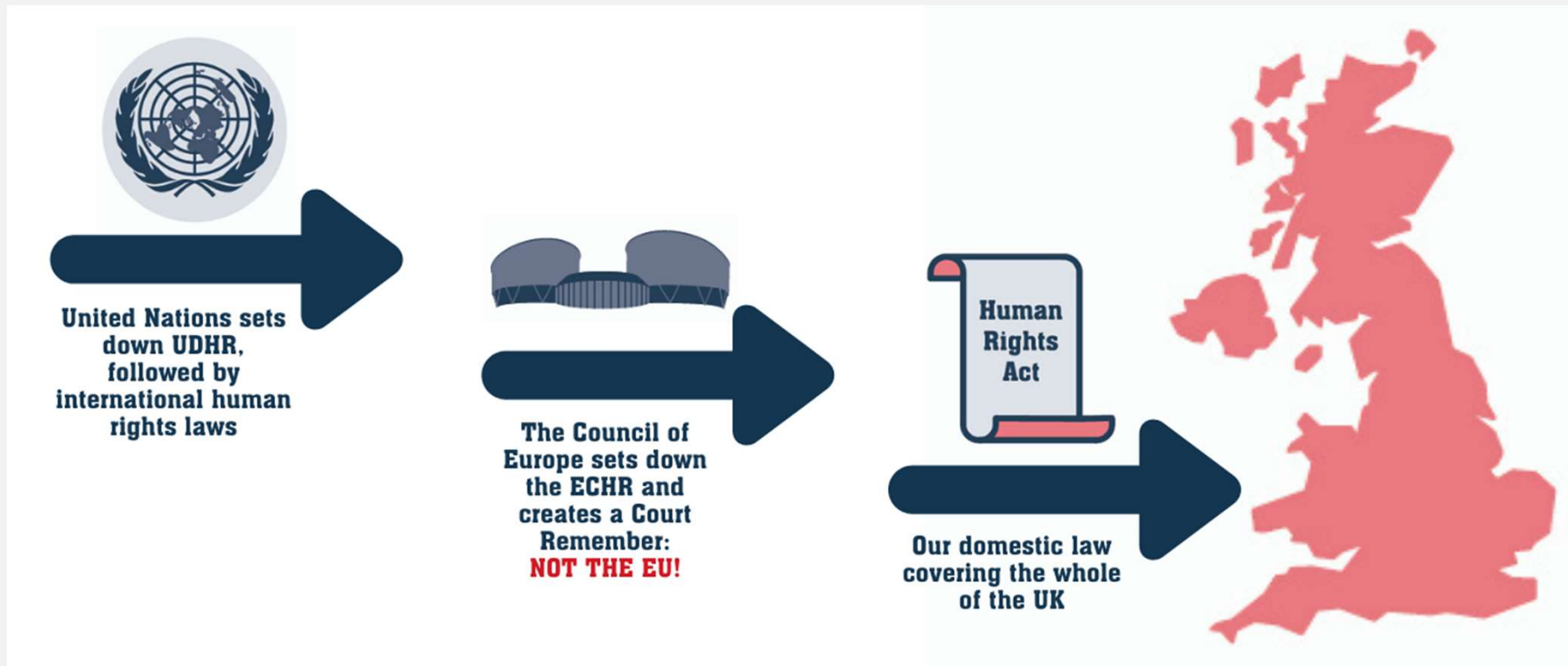
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“ **people** with disabilities, both mental and physical, have the same human rights as the rest of the human race. It may be that those rights have sometimes to be limited or restricted because of their disabilities, but the **starting point should be the same as that for everyone else**. This flows inexorably from the **universal character of human rights**, founded on the inherent **dignity of all human beings** ... Far from disability entitling the state to deny such people human rights: rather it places upon the state (and upon others) the duty to make reasonable accommodation to cater for the special needs of those with disabilities ”



Baroness Hale, P v Cheshire West and Chester Council and P & Q v Surrey County Council, 2011 (UK Supreme Court)

Where do human rights come from?



Human rights: public services

- Being person-centred: the human in front of us, including children.
- When decisions are being made about a person's life, human rights must be respected and protected
- Human rights are based on agreed legal definitions not a battle of moral compasses – supporting move away from risk-adverse to management
- Provides leaders with a way to prioritise and be proactive


“A human rights culture is one that fosters basic respect for human rights and creates a climate in which such respect becomes an **integral part of our way of life and a reference point for our dealing with public authorities** ... in which all our institutional policies and practices are influenced by these ideas ... The building of a human rights culture ...[depends] not just on courts awarding remedies for violations of individuals' rights, but on **decision-makers in all public services internalising the requirements of human rights law, integrating those standards into their policy and decision-making processes, and ensuring that the delivery of public services in all fields is fully informed by human rights considerations.**”



Parliament's Joint Committee of Human Rights

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In your experience is a culture of respect for human rights happening in the provision of education?

 Start presenting to display the poll results on this slide.

3 ways our Human Rights Act works



1. The Human Rights Act puts a legal duty on public authorities to respect and protect human rights across their actions, decisions, policies, services, etc.



2. Other laws should be applied in a way that respects your human rights, as far as possible



3. If 1 and 2 are not complied with people can now bring legal cases in the UK courts

HRA 1: The legal duty on public bodies (and their officials)



RESPECT people's human rights. Not restrict them or try to breach them



PROTECT people's human rights. Step in and take positive action to protect people from harm, usually called safeguarding.



FULFILL people's human rights. Investigate when things have gone wrong, (and try to stop it from happening again).

These means all actions, decisions, protocols, policies: **leadership and frontline practice**





HRA 2: Foundation Law

Education
laws,
codes,
guidance,
provision



- The Human Rights Act operates as a foundation law
- All other legislation should be compatible with human rights or 'human rights compliant'
- This includes the Coronavirus Act 2020
- This includes all other law in public service, including education, and policy and guidance.

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How many human rights do we all have in the Human Rights Act?

 Start presenting to display the poll results on this slide.

Our protections in the Human Rights Act:

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Right to life
(Article 2)



Right not to be tortured or
treated in an inhuman or
degrading way
(Article 3)



Right to be free from
slavery or forced labour
(Article 4)



Right to liberty
(Article 5)



Right to a fair trial
(Article 6)



Right not to be punished for
something which wasn't against
the law when you did it
(Article 7)



Right to respect for private
and family life, home and
correspondence
(Article 8)



Right to freedom
of thought, conscience
and religion
(Article 9)



Right to freedom
of expression
(Article 10)



Right to freedom of
assembly and association
(Article 11)



Right to marry
and found a family
(Article 12)



Right not to be discriminated
against in relation to any
of the human rights listed here
(Article 14)



Right to peaceful
enjoyment of possessions
(Article 1, Protocol 1)



Right to education
(Article 2, Protocol 1)



Right to free
elections
(Article 3, Protocol 1)



Abolition of the
death penalty
(Article 1, Protocol 13)

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Absolute and non absolute rights: a practical framework for decisions



Absolute human rights

You can **never** restrict / limit / interfere with **absolute rights**, irrespective of the reason, including resources.

Any such restriction is unlawful



Non-absolute rights:

3-stage test to restrict these human rights



1. Lawful (does a law allow the restriction?)



2. Legitimate reason (set out in the right itself)



3. Proportionate: **very important**. Has the least restrictive option been taken? Are there alternatives?



Rights we will look at today



Right to education
(Article 2, Protocol 1)



Right to respect for private
and family life, home and
correspondence
(Article 8)



Right not to be discriminated
against in relation to any
of the human rights listed here
(Article 14)



Right to Education

Right to education

(Article 2, Protocol 1)

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- The right to education: access what is available not a right to learn whatever you want, wherever or however you want.
- Government can consider the needs and resources of the community in determining educational provision
- Focus is on:
 - an effective education (that is adequate and appropriate)
 - access to existing educational institutions
 - also includes parental rights to make sure their philosophical / religious beliefs are respected



Right to respect for private
and family life, home and
correspondence
(Article 8)

Right to respect for private & family life, home, and correspondence

Private life

- well-being
- autonomy
- participation in the community
- relationships with others
- confidentiality

Family life

- develop ordinary family relations
- ongoing contact if split up

Home

- not a right to housing
- about enjoyment of current home – this could include a care home or hospital ward

Correspondence

- uncensored communication with others
- letters and modern communications



Right not to be discriminated
against in relation to any
of the human rights listed here

(Article 14)

Right to be free from discrimination

- This right should be linked to one of the other 16 human rights
- Is difference of treatment reasonable and objectively justifiable:
 - Not discrimination if different treatment is positive, eg helping access rights.
 - Is discrimination if different treatment is worse than other people in the same situation or applying rules that have a worse impact.
- Reasons for discrimination include Equality Act 9 protected characteristics AND:
 - Other reasons, e.g. receiving welfare benefits, socio-economic status
 - Combined reasons, e.g. because a young woman with learning disabilities

Liam's Story

Liam has autism, anxiety and Pathological Demand Avoidance. He was excluded from school after an incident in which he hit a teaching assistant. The school argued that Liam's behaviour amounted to 'a tendency to physical...abuse of other persons' which meant that the protection from discrimination that he would otherwise be afforded by the Equality Act 2010 would be removed.

This was challenged using the right to education and the right to be free from discrimination. The court said that the human rights compliant interpretation of the law means that Liam met the definition of a disabled person under the Equality Act, and should be protected from discriminatory decisions, including those relating to school exclusion.



Using international rights to help explain & implement domestic human rights

UN Conventions: Rights of the Child Rights of Disabled People



- CRC Article 23: right to special care and education for disabled children
- CRC Article 28: right to an education
- CR C Article 29: right to an education which develops personality, respect for others' rights and the environment

UNCRPD: access to inclusive, quality and free education on an equal basis with others

LINK TO:

- Article 2, Protocol 1: right to education
- Article 14: right to be free from discrimination
- Article 8: right private and family life, home and correspondence

How do we apply this in real life?

Section 6: legal duty to uphold human rights across all decisions and policies

Issues under rights to education,

- Accessing education equally with appropriate support
- Challenging blanket policies excluding disabled children
- Not treating disabled differently so as to accommodate needs
- Applying policies that disproportionately impact disabled students, e.g. exclusion
- Not supporting children to participate and build relationships
- Undermining children's wellbeing

Using the human rights duties to respect and protect: don't restrict (unless can and meet 3 tests) and positively protect – **SUPPORT INCLUSIVE EDUCATION**

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Revisiting the culture of respect for human rights - following more information about the Human Rights Act, do you see this happening in the provision of education?

 Start presenting to display the poll results on this slide.

FAIR model: it works for practice and leadership

- F** Facts- What is the situation we're trying to remedy or the need we're trying to meet? Put people at the heart of these discussions – how much real engagement do we have with the people we serve? And how much power?
- A** Analysis of the rights at stake- After discussions with the people impacted, discern what rights are potentially at stake, are these absolute or non-absolute? Are there equality issues?
- I** Identify changes necessary and who is responsible for making these. This will likely require the involvement of many within the authority, both duty bears across services and others – the HRA duty is wide – the golden thread to overcome individual or siloed approaches.
- R** Record and review. How do you know what you're doing is effective? Where are the people and what power do they have? What positive rights promoting practices can you grow, what rights-risking needs to be addressed?

Practical plain language resources:

- BIHR Coronavirus and Human Rights Hub: www.bihr.org.uk/human-rights-and-coronavirus-hub
- BIHR's FREE co-produced resources on using human rights for staff, advocates and people' using services: www.bihr.org.uk/shop (download, we can't currently post). Including "Learning Disability, Autism and Human Rights Guide.
- BIHR's Know Your Human Rights Self-advocacy website for people with care and support needs: www.knowyourhumanrights.co.uk

Plus follow us on social media for our latest commentary, analysis, sessions and resources
(and videos on YouTube)



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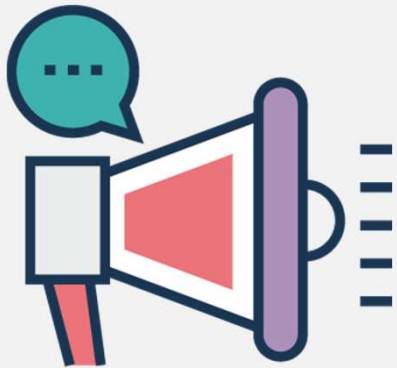
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NEW! Communities of Practice

An online platform where you can:



- Access our resources and information and find out about further training. We will also be holding Q&A sessions with a BIHR staff member.
- Discuss and create change with people in a similar situation to you, whether that is about your life or your work.
- Share your expert experience with us. This will inform what we tell those in positions of power about the human rights issues that impact you.

Get involved: <https://www.bihr.org.uk/bihrs-communities-of-practice>

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What 1 action will you take from this session to improve human rights practice in inclusive education?

 Start presenting to display the poll results on this slide.

A Final Thought



**Eleanor Roosevelt
First Chairperson of
United Nations
Commission on Human
Rights**

“ Where do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world.

Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.

Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world. ”